

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeals of Michael Hays and
Dupont East Civic Action Association

BZA Appeal Nos. 20452 & 20453
ANC 2B04

Perseus TDC, LLC’s Opposition to Appellants’ Motion for Expert Qualification

Perseus TDC, LLC (“**Perseus**”) hereby respectfully requests that the Board of Zoning Adjustment (“**Board**”) deny the joint motion (“**Motion**”) of Appellants Dupont East Civic Action Association and Michael Hays to qualify James McCrery as an expert in the District of Columbia Zoning Regulations in the above-referenced appeals (“**Appeals**”). At its November 10, 2021 public meeting, the Board granted Appellants’ request to qualify Mr. McCrery as an expert in architecture, to which Perseus did not object. However, Appellants’ Motion and Mr. McCrery’s curriculum vitae (“**CV**”) do not demonstrate extensive experience in the interpretation and application of the D.C. Zoning Regulations so as to support qualifying Mr. McCrery as an expert on that subject matter for purposes of the Board’s review in the Appeals.

Rather, the CV submitted by Appellants indicates a primary focus on design work related specifically to the construction or renovation of chapels and other church buildings in various locations across the United States, with only very occasional work within the District of Columbia. For instance, of the built works listed on Mr. McCrery’s CV, only five are located in the District – two chapels, a grave memorial in the Congressional Cemetery, a pedestal for a statue in the U.S. Capitol Building, and the interior of the Supreme Court gift shop. Further, it is unclear the extent to which these works implicated the Zoning Regulations, if at all. Although the Declaration submitted by Appellants refers to “various private residences” located in the District and alludes to work on an ambassador’s residence in the 1990s, this is scant support for such expertise as would help to inform the Board’s evaluation of the very technical zoning

questions at issue in this case. Nor is there any indication that Mr. McCrery is especially versed in how particular provisions of the Zoning Regulations have been historically interpreted and applied. Moreover, the information submitted does not indicate what projects, if any, Mr. McCrery has handled in the District since the Zoning Regulations were comprehensively rewritten in 2016.

Appellants rely upon Mr. McCrery's work on the 2003 *South Capitol Gateway and Corridor Improvement Study*. However, that study, while providing an overview of the history of South Capitol Street and proposals for its revitalization, did not include any evaluation whatsoever of zoning requirements or any development standards set forth in the Zoning Regulations.¹

While Appellants' submission suggests that Mr. McCrery's work as a professor instructing undergraduate architecture students encompasses a proficiency in the District's Zoning Regulations, the CV Appellants have provided does not clearly indicate the specific extent of professional experience from which that proficiency was gained. Moreover, that Mr. McCrery may have a sufficient understanding of the District's zoning parameters to guide students' work in an undergraduate studio course does not by itself compel the conclusion that his experience with the regulations is of such a depth as to shed special light on the zoning provisions before the Board in this case. Lastly, the various special appointments and affiliations identified on Mr. McCrery's CV do not demonstrate any notable experience in reviewing or advising on zoning matters that would support designation as an expert. Mr. McCrery's appointment and service on the U.S. Commission of Fine Arts ("CFA") does not, as Appellants suggest, signify any special expertise in the Zoning Regulations. The CFA's review of

¹ The *South Capitol Gateway and Corridor Improvement Study* can be accessed online at the following address: <https://www.jdland.com/dc/files/SouthCapitolStreetGateway-and-ImprovementStudy.pdf>.

government properties and of sites subject to the Shipstead-Luce Act and Old Georgetown Act is focused on aesthetic issues and does not require the application or interpretation of the District's Zoning Regulations.²

In short, while Perseus did not object to Mr. McCrery being accepted as an expert in architecture, the evidence in the record does not support concluding that his professional experience is such that he should be recognized as an expert in the interpretation and application of the District of Columbia Zoning Regulations for purposes of offering expert testimony to inform the Board's review of the zoning issues raised in these Appeals.

For all the reasons discussed above, Perseus respectfully requests that the Board deny the Motion.

Respectfully Submitted,

 /s/
Christine A. Roddy

 /s/
Lawrence Ferris

² As explained on its website, the CFA's review evaluates "the aesthetic character of new or renovated construction. In the case of the Shipstead-Luce area, the CFA also considers whether a proposed design is consistent with the goal of protecting the public interest in the adjacent federal parks and buildings." The website goes on to say, "CFA has no written policies or guidelines for design review under the Shipstead-Luce Act; each case is considered by the CFA on its merits." See <https://www.cfa.gov/project-review/shipstead-luce/shipstead-luce-faqs>.

Certificate of Service

The undersigned hereby certifies that copies of the foregoing documents were delivered by electronic mail to the following addresses on February 8, 2022.

Matthew LeGrant, *Zoning Administrator*
Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
matthew.legrant@dc.gov

Hugh J. Green, Esq., *Counsel for DCRA*
Office of the General Counsel
Department of Consumer and Regulatory Affairs
hugh.green@dc.gov

Michael D. Hays, *Appellant in Case No. 20452*
michael.hays@comcast.net

Edward V. Hanlon, *Representative of Appellant in Case No. 20453*
Dupont East Civic Action Association
ed.hanlon.3@gmail.com

Andrew Zimmitti, *Counsel for Supreme Council of the Scottish Rite of Freemasonry, 33rd Degree, Southern Jurisdiction, USA*
Manatt, Phelps & Phillips, LLP
azimmitti@manatt.com

Moshe Pasternak, *Single Member District Representative for ANC 2B04*
2B04@anc.dc.gov

_____/s/
Lawrence Ferris